82-2065

NO. _____

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

JOHN G. RUST,

Petitioner,

vs.

JAMES M. RUVOLO, INDIVIDUALLY AND AS CHAIRMAN, DEMOCRATIC PARTY OF LUCAS COUNTY, OHIO AND DEMOCRATIC PARTY OF LUCAS COUNTY, OHIO, A POLITICAL ORGANIZATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE OHIO SUPREME COURT

JOHN G. RUST
Attorney for Petitioner
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Toledo, Ohio 43604
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QUESTION PRESENTED FOR REVIEW

1. In an action by an unendorsed, but duly certified, candidate for the Democratic Party's nomination for U.S. Congress from the 9th Congressional District, in the State Primary Election, against the Local Democrat County Party and Chairman, does the announcement and implementation by the Party Chairman of a Policy and Rule denying all unendorsed candidates the right to campaign and speak, at the main Political meetings and functions of the Democrat County Party and its chartered and controlled Party Clubs, so as to cause the unendorsed candidatesat a substantial number of the meetings to be treated as "Political Out Casts", "Political Lepers", with whom good Party Democrats should not speak, constitute legal grounds

showing sufficient State Action and a substantial denial of the rights of Freedom of Speech, and Free Political Association, assuming that such announced Policies effectively deny to the unendorsed candidates the right to campaign effectively at the meetings following the policy, and with many other Democrats who look at the unendorsed candidates as persons, by reason of the rule, not to be talked to, nor dealt with?

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TABLE OF AUTHORITIES

CERTIFICATE AND PROOF OF SERVICE

Three copies of this Petition for a Writ of Certiorari were mailed by first class mail to the following counsel for Respondents:

Jerome Phillips,

John A. Harris, III,

Joan Torzewski,

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Toledo, Ohio 43604

Area Code 419, 243-1105

Attorneys for Respondents

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JOHN G. RUST,

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OPINIONS BELOW

None of the opinions below have been reported.

The decision of the Ohio Supreme Court dismissing the appeal and holding that no substantial constitutional question was involved, is found in the Appendix herein, Page 1a, and the same Court's decision denying Petitioner's Motion to Certify is in the Appendix Page 3a. The opinion of the Lucas County, Ohio Court of Appeals, affirming the Trial Court's granting of the Motion to Dismiss is found in the Appendix herein at Page 7a; and the Court of Appeals decision at Page 5a, and the Trial Court decision and opinion of the Court of Common Pleas, Lucas County, Ohio is found herein at Page 17a.

STATEMENT OF JURISDICTIONAL GROUNDS

Jurisdiction of this Court is timely invoked by filing within 90 days this Petition For a Writ of Certiorari to the Decision of March 23, 1983, denying Petitioner's Motion to Certify, and denying that any substantial constitutional questions were involved. This decision and filed entry terminated the case in the Ohio Supreme Court, and the case was then remanded to the Lucas County, Ohio, Court of Appeals.

The statute giving this Court jurisdiction to review the Ohio Supreme Court's decision is 28 U.S.C.A. Par. 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES

Amendment I to U.S. Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assembly, and to petition the Government for a redress of grievances."

Pages Revised Ohio Code, Annotated, Appendix, P. 363

Amendment IV, Section 1, to U.S. Constitution

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws."

Pages Ohio Revised Code, Annotated, Appendix, P. 364.

The relevant Ohio Statutes are too voluminous to reproduce here, but are found in Page's Ohio Revised Code, Annotated, Title 35.

Of particular relevance are Chapter 3515; Primaries; Nominations; and Chapter 3517; Campaigns; Political Parties.

STATEMENT OF THE CASE

This action was filed on May 24, 1982 in the Court of Common Pleas, Lucas County, Ohio, with the same parties shown on the cover, in an attempt by this Counsel, then a duly certified but unendorsed candidate to be the Democratic Nominee for the 9th Congressional District of Ohio, to be accorded the right to campaign and to speak at the campaign meetings of the Lucas County Democratic Party, and of its officially licensed clubs, as was accorded the endorsed candidate. Respondent James M. Ruvolo, then the Chairman, and the Democratic Party of Lucas County, Ohio, had announced, and were carrying out a policy, which in effect prohibited any unendorsed candidate from speaking at the club and party meetings, which were

the principal campaign functions in the Primary Election of June 8, 1982. The Complaint in Par. 4 stated in part:

> "4. At some of the meetings of the said Democratic Clubs and area organizations of the Lucas County Democratic Party, due to the intercession of long-time Democratic friends of Plaintiff Rust, or due to the expressed wish of the group or decision of the Chairperson, involved, Plaintiff Rust has been allowed to speak, and on those occasions was able effectively and strongly to present his case and candidacy, and was well and favorably received. Plaintiff Rust was then able effectively to speak and get his message across at 6 of the club meetings between April 28th and May 22nd, 1982, and was denied the right to speak in the same period at 10 meetings of the Democratic clubs.
>
> 5. At 2 of the said 10 meetings of the Lucas County Democratic clubs, Plaintiff, although presenting himself in a polite manner, was abruptly and summarily ordered to leave, and was not allowed to stay, nor to distribute any campaign literature. In practically all of the

said area club meetings when Plaintiff was denied the right to speak, Plaintiff was addressed and spoken of, and to, in a hostile, adverse, critical manner as though he were a "Political Leper", who should be shunned and avoided. The result of such remarks by the chairpersons, each of whom stated they were carrying out the express orders and policies of Chairman Ruvolo, the Lucas County Democratic Party, was that Plaintiff was characterized as a "Political Outcast", as some kind of a bad or evil person, with whom no good Democrat should even talk."

The Complaint also alleged an effective and unconstitutional denial of rights under the U.S. Constitution, stating in Par. 6 as follows:

"6. Further, the denial of the right to participate in the Democratic process of giving one's views, and stating his or her case in support of one's candidacy, has in this election an effect far reaching and adverse to Plaintiff, and if not stopped, will certainly and definitely handicap and hurt Plaintiff in his right

and effort to communicate his candidacy to the members of his party. The Democrats and others attending these club and organization meetings are frequently leaders and activists who exert a strong and significant influence among Democrats in this election. All the actions, denial of Democratic rights, denial of Constitutional and lawful rights of Freedom of Speech and the right to participate as a candidate, and the right of Freedom of Speech of Democrats to hear, and become informed, of the Plaintiff's views and candidacy, are substantial, significant, and Defendants and the various Democratic clubs and organizations will definitely and certainly continue to deny Plaintiff and Democrats who have a right to hear and be informed of Plaintiff's candidacy, and Plaintiff and Democrats generally will be irreparably harmed, damaged, and denied the full and free rights of a free, Democratic election, and full participation in the Democratic Party and process. Further, said denials of the right to speak, and of the right of Democrats to hear and be informed, also has worked in the past, and will work in the

> future, to deny Plaintiff the right to be received and considered as a candidate with whom it is legitimate and proper to talk to. In short, the adverse effects of such a dictatorial policy result in the Democrats in this election being asked to "Rubber stamp" the endorsement of the Party Chairman Ruvolo, whereas the age-old principles of the Democratic Party call for a full, free, and meaningful exchange of views and questions between candidates."

The Complaint also alleged state action through the Ohio Revised Code Statutes, Chapter 3517, giving approval to the Democrat and Republican Parties, and using them to certify Party members, and requiring a candidate to provide a Petition duly signed by Party Members. The Primary Elections are held for State, City, and Federal Offices each June.

In the Trial Court, in granting the Motion to Dismiss on May 26, 1982,

the Trial Judge in his Decision, 17a of the Appendix, at page 21a stated in part:

> "Plaintiff claims that Defendants have denied him his constitutional rights to free association and speech.",

and held that Plaintiff Rust:

> "...has not been deprived of his constitutional rights of free speech of assembly."

In Petitioner's Appeal to the Court of Appeals, Lucas County, Ohio, the Petitioner claimed a violation of his constitutional rights as guaranteed by the First Amendment and 14th Amendment, Assignment of Error, Part C reading as follows:

> "BY DENYING THE PLAINTIFF ACCESS TO DEMOCRATIC CLUB MEETINGS, THE DEFENDANT DENIED THE PLAINTIFF HIS RIGHT TO FREE SPEECH, AND THE RIGHT OF THOSE PRESENT TO HEAR, AS GUARANTEED BY THE FIRST AMENDMENT."

And also at page 10 of Petitioner's Brief and Assignment of Errors in the Lucas County Court of Appeals:

> "Both the Ohio and the United States Constitutions guarantee the right of free speech. OHIO CONST. art.I, §11; U.S. CONST. Amend.I. This right is guaranteed because it is essential to the operation of a free government, Williams v. Rhodes, 393 U.S.23(1968); 16 A Am. Jur 2d Constitutional Law §497(1966). "In a republic where the people are sovereign, the ability of the citizenry, to make informed choices among candidates for office is essential." Buckley v. Valeo, 424 U.S. 1, 14-15(1976). Consequently, any limitation of this right, except in very narrow circumstances, is unconstitutional."

Petitioner invoked the 14th Amendment protections at page 13 of the Court of Appeals Brief, as follows:

> "The defendant has alleged that the court has no right to adjudicate this case because it involves the workings of a political party. However, this

> is clearly not the case when a party has infringed on a person's constitutional rights. Smith v. Allwright, 321 U.S. 649(1944). Ripon Society, Inc. v. National Republican Party, 525 F2d 565(D.C. Cir. 1975). Smith, as previously discussed, held that a political party may not discriminate against blacks, so as to deny them their right to vote. In Ripon, the court stated that "the internal workings of a political party (are) squarely within the protection of the First Amendment." Ripon Society, Inc., v. National Republican Party, 525 F 2d 567, 586 (D.C.Cir.1976). Therefore, while a court will generally refrain from reviewing the action of a political party, it should intervene when constitutional rights are involved."

The Lucas County Court of Appeals recognized, but rejected, this Petitioner's claim that his constitutional rights had been denied, and the Court of Appeals Opinion, at page 10a of the Appendix herein, stated as follows:

"On May 26, 1982, the trial court, finding that appellant had not been deprived of his constitutional rights of free speech and assembly and that the matter was patently political, granted appellees' motion to dismiss.

From that judgment, appellant appeals, presenting the following assignment of error:

"The Trial Court committed reversible error in granting defendant's Motion to Dismiss because Plaintiff's complaint does not state a claim on which relief may be granted."

Appellant contends that the trial court erred in dismissing appellant's complaint for the reason that said complaint did state a valid claim for relief from the violation of appellant's rights of free speech and assembly."

The Lucas County Court of Appeals in effect held that the Courts could not take jurisdiction over a Political matter, as had the Trial Court, stating in part, as follows, as shown at Page 15a of the Appendix herein:

"Finally, we note that we do not find that appellees' conduct constitutes the requisite "State action", essential to appellant's claim, in that there is neither a sufficient nexus between the challenged action and the State nor any claim of invidious discrimination affecting participation in the electorial process. See Ripon Society, Inc., supra, at 574-76. Further, compare Moose Lodge No. 107 v. Irvis (1972), 407 U.S. 163; Smith v. Allwright (1944), 321 U.S. 649.

For the foregoing reasons, we find appellant's assignment of error not well taken."

In Petitioner's filing in the Ohio Supreme Court, entitled "Appellant's Memorandum in Support of Claimed Jurisdiction", Petitioner proposed and raised the Constitutional issues as follows:

At Page 3:

"ARGUMENT
PROPOSITION OF LAW NUMBER 1

UNDER THE PROVISIONS OF THE CONSTITUTIONS OF BOTH THE NATIONAL PARTY, THE DEMOCRATIC PARTY OF THE UNITED STATES, AND THE STATE PARTY, THE OHIO DEMOCRATIC PARTY CONSTITUTION AND BYLAWS, ALL DULY CERTIFIED CANDIDATES FOR NOMINATION IN THE STATE AND FEDERAL DEMOCRATIC PRIMARY ELECTION, REGARDLESS OF WHETHER ENDORSED BY THE PARTY OR NOT, HAVE A RIGHT PROTECTED BY THE COURTS, TO SPEAK AT THE MEETINGS OF THE CLUBS AND ORGANIZATIONS CHARTERED AND RECOGNIZED BY THE DEMOCRATIC PARTY OF LUCAS COUNTY, OHIO; AND ANY DIRECTIVE OR ORDER DENYING THE RIGHT OF AN UNENDORSED BUT CERTIFIED CANDIDATE TO PARTICIPATE IN THE SAME FASHION ACCORDED ENDORSED CANDIDATES, WILL, ON APPLICATION TO A COURT OF EQUITY, BE ENJOINED, AND WILL BE DECLARED OF NO FORCE NOR EFFECT."

At page 6:

"PROPOSITION OF LAW NUMBER II

THE OHIO DEMOCRATIC PARTY, AND THE LOCAL COUNTY PARTIES WHICH ARE FORMED UNDER THE AUTHORITY OF THE STATE PARTY, THROUGH ITS BROAD AND COMPREHENSIVE ACTS AND RESPONSIBILITIES, CONSTITUTES A STATE AGENCY FOR

CONSTITUTIONAL PURPOSES; AND, THEREFORE, THE REQUISITE STATE ACTION IS PRESENT TO INVOKE THE PROTECTIONS OF THE U.S. CONSTITUTION."

At page 9:

"PROPOSITION OF LAW NUMBER III

THE ACTION OF THE LUCAS COUNTY DEMOCRATIC PARTY THROUGH ITS CHAIRMAN OF NOT ALLOWING UNENDORSED BUT DULY CERTIFIED CANDIDATES FOR OFFICE IN THE OHIO PRIMARY ELECTIONS, TO SPEAK AND BE ACCORDED THE SAME RIGHTS AS ARE ACCORDED ENDORSED CANDIDATES FOR PRESENTATION OF THEIR VIEWS AND CANDIDACIES, CONSTITUTES A DENIAL OF RIGHTS GUARANTEED BY THE OHIO AND UNITED STATES CONSTITUTIONS OF FREEDOM OF SPEECH AND POLITICAL ASSOCIATION; AND SUCH RIGHTS WILL BE PROTECTED AND ENFORCED IN THE COURTS."

The Ohio Supreme Court, without opinion, held that no substantial constitutional question existed, Page 1a of Appendix herein, and that Petitioner's Motion to Certify the Record to the Ohio Supreme Court, was denied, Page 3a

of Appendix herein.

Petitioner sought a Declaratory Judgment of his/and others similarly rights situated, his Complaint, Par. 11, D. at page 7 reading:

> "D. To grant a Declaratory Judgment as to the rights of Plaintiff, and others similarly situated, as to their rights to campaign and be heard, and the rights of Democrats to hear and communicate with duly certified Democratic candidates as Plaintiff is;
>
> E. And for such other and further relief as is proper at law and in equity."

In the Court of Appeals, each side stated they desired a Court ruling. No Court has refused relief on the expressed ground of mootness. The legal issues continue so that full and effective exposition of ideas and positions may be had and known, now and in the future.

ARGUMENT

In view of the procedural posture of this case, there should be no doubt that there has been an effective denial of the Petitioner's opportunity to campaign effectively and fully in the past Primary of June 8, 1982. In the Court of Appeals, both sides agreed that a Court Decision was desired, and Petitioner continues to want a Declaratory Judgment, as prayed in Par. 11, D. of his Complaint filed in the Trial Court.

Will the Courts assert Jurisdiction to give full meaning to the rights of freedom of speech, and political association? Is there sufficient State Action through its provision for the Political Parties, and their use in the statutory Primary elections?

OHIO THROUGH ITS STATUTORY PROVISIONS OF UTILIZING THE POLITICAL PARTIES IN ITS PRIMARIES HAS ESTABLISHED SUFFICIENT STATE ACTION TO CALL FOR PROTECTION BY THE COURTS OF RIGHTS UNDER THE U.S. CONSTITUTION.

First of all, this Counsel still has not found any decision anywhere which is a so-called "Cow Case" -- one that stands on all fours with the case at Bar. Therefore, we will cite what we consider to be the closest in relevance.

Throughout this case we have challenged opposing Counsel to cite one case where a Political Party's Action was directly involved in the electoral process, and where the Court denied constitutional protection. We submit that our U.S. Constitution properly construed and applied will strike down any action, by a political party, or by

the State, which involves directly an integral part of the electoral process. "And so", this Court now should give definition and guidance as to what can and cannot be done in this area.

In Williams v. Rhodes, 393 U.S. 23, 21 L.ed.2d 24, this Court declared unconstitutional the overly burdensome requirements of numbers needed by a Political Party to get their candidate on the ballot, and the time limits therein provided. In part this Court then stated as follows:

> "393 U.S. 28: (1) Ohio's claim that the political-question doctrine precludes judicial consideration of these cases requires very little discussion. That claim has been rejected in cases of this kind numerous times. It was rejected by the Court unanimously in 1892 in the case of McPherson v. Blacker, 146 US 1, 23-24 36 L. Ed. 869, 873, 13 S.Ct. 3, and more recently it has been squarely

rejected in Baker v. Carr, 369 U.S. 186, 208-237, 7 L.Ed. 2d 668, 680-697, 82 S.Ct. 691 (1962), and in Wesberry v. Sanders, 376 U.S. 1, 5-7, 11 L.Ed. 2d 481, 485-486, 84 S.Ct. 526 (1964). Other cases to the same effect need not now be cited. These cases do raise a justiciable controversy under the Constitution and cannot be relegated to the political arena.

393 U.S. 30: In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. In the present situation the state laws place burdens on two different, although overlapping, kinds of rights-the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First

Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same, protection from infringement by the States. Similarly we have said with reference to the right to vote: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

393 U.S. 32 "Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms."

393 U.S. 38 The First Amendment, made applicable to the States by reason of the Fourteenth Amendment, lies at the root of these cases. The right of association is one form of "orderly group activity" (NAACP v. Button, 371 U.S. 415, 430, 9 L.Ed. 2d 405, 416, 83 S.Ct. 328), protected by the First Amendment. The right "to engage in association for the advancement of beliefs and ideas" (NAACP v. Alabama, 357 U.S. 449, 460, 2 L.Ed. 2d 1488,

1498, 78 S.Ct. 1163), is one activity of that nature that has First Amendment protection. As we said in Bates v. Little Rock, 361 U.S. 516, 523, 4 L.Ed. 2d 480, 485, 80 S.Ct. 412, "freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States." And see Louisiana v. NAACP, 366 U.S. 293, 296, 6 L.Ed. 2d 301, 304, 81 S.Ct. 1333. At the root of the present controversy is the right to vote-a "fundamental political right" that is "Preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370, 30 L.Ed. 220, 226, 6 S.Ct. 1064. The rights of expression and assembly may be "illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17, 11 L.Ed. 2d 481, 492, 84 S. Ct. 526."

In Smith v. Allwright, 321 U.S. 649, 88 L.ed. 987, this Court held unconstitutional the Action of the Democratic Party in Texas in excluding Blacks from voting in its Primary Elections,

stating the Party was for constitutional purposes, an agency of the State. In 321 U.S. at page 663, this Court stated in part:

> "We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state in so far as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party."

In Texas and in Ohio, state statutes, Page's Ohio Revised Code Annotated, Chapter 3517, provides for the election of the County Committee which controls, and likewise for the State Controlling Committee. At Primaries a voter must declare his Party to vote in that

Party's Primary.

A case close to the issues at Bar is Abrams v. Reno, U.S.D. Ct., S.D. Florida (1978), 452 F.Supp. 1166, where a Florida Statute which denied a Political Party the right to make endorsements, was held contrary to the First and Fourteenth Amendments of the U.S. Constitution. Petitioner agrees that the Democratic Party should be allowed to make endorsements. But if our Party is not to be dominated and run by "Political Dictators" -- by "One Man Rule" -- however well intentioned -- then a duly certified candidate should be allowed effectively to campaign and speak at all the main campaign functions of the Party and its Clubs. Why not? In the 1982 campaign for the Democratic nomination for

Governor, the candidates, and their representatives, were allowed to speak, since the State had not endorsed Mr. Celeste, Mr. Brown, nor Mr. Sprenger. All went well, and we elected Mr. Celeste.

If a Political Party's right to endorse is an integral and protected constitutional right, so is the right of a certified candidate to speak and campaign.

In 1984, Ohio will doubtlessly endorse Senator Glenn. Does that mean that in the Ohio Primary election, other candidates and their representatives, like Vice-President Mondale, SenatorsCranston, Hollings, Hart, and others will not be allowed to speak?

In Abrams v. Reno, supra, the Court in 452 F.Supp. at page 1170 stated:

> "In Buckley v. Valeo- 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, the Court stated: "the court's decisions in Mills v. Alabama, 384 U.S. 214 (86 S.Ct. 1434,) 46 L.Ed.2d 484 . . . and Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, (94 S.Ct. 2831,) 41 L.Ed.2d 730 . . ., held that legislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment."
> The Mills and Tornillo cases concern legislative restrictions placed on the media (in Mills, the right of a newspaper to endorse on the day of the election). This difference from the instant case is not material in principle."

Respondents may argue that Petitioner should be denied any and all relief herein, because he did not go before the Party's Screening Committee. A factual response is that the Petitioner called the Party Chairman re Petitioner's running for Congress, and in so many

words Petitioner was told "to go south in a blue coupe". With that response, Petitioner knew any appearance before the Screening Committee would be futile. The Chairman has not denied, at the Hearing on the Motion for Temporary Restraining Order, that no one has ever been endorsed who did not have the approval of the Party Chairman. Also, suppose that 3 well qualified candidates appear before the Screening Committee, and one is endorsed. The other 2 candidates would want, and deserve, the same rights as claimed herein by Petitioner.

In a Congressional Primary Election in Lucas County, under the present domination of the office of the County Chairman, who is elected by the Precinct Committeeman, the present policy makes

an unendorsed candidate a "Political Out Cast" -- "One Beyond the Pale" -- a "Political Leper".

Conformity runs strong in the Party Organization and many Party leaders. The choice of Party endorsements at the Congressional and lower levels can be fairly said historically to have been made by the Party Chairman. He or she hands out jobs, patronage, and other benefits important to Party and Club members.

In a Primary, inside one's own party, one can more freely talk and campaign. Position weaknesses can be ferreted out, and improved, so the successful candidate will have a better chance to win in the general election.

There is validity to the principles of free competition of ideas and people.

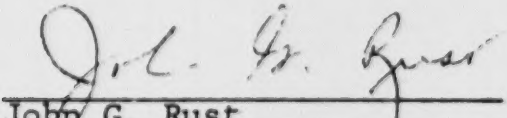
CONCLUSION

Freedom of Speech and an unfettered exchange of ideas are needed and good for the United States, and our great Democratic Party, and all its branches and members.

The relief herein sought is needed now, and in the future.

Wherefore Petitioner requests that this Court issue its Writ of Certiorari to the Ohio Supreme Court, and review and pass upon the Questions Presented for Review appearing at page (i) herein.

Respectfully submitted,



John G. Rust
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DATED: June 21, 1983

APPENDIX A

THE SUPREME COURT OF OHIO

NO. 82-1825

C.A. NO. L-82-169

TRIAL COURT NO. CV 82-1277

JOHN G. RUST,

Appellant,

vs.

JAMES M. RUVOLO,

Appellee.

APPEAL FROM THE COURT OF APPEALS

FOR LUCAS COUNTY

1983 TERM

TO WIT: March 9, 1983

FILED: March 23, 1983

This cause, here on appeal as of right from the Court of Appeals for Lucas County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte

dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Lucas County for entry.

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this 23rd day of March, 1983.

/s/ James Wm. Kelly, Clerk

/s/ Sam F. Adkins, Deputy

APPENDIX B

THE SUPREME COURT OF OHIO

NO. 82-1825

C.A. NO. L-82-169

TRIAL COURT NO. CV 82-1277

JOHN G. RUST,

Appellant,

vs.

JAMES M. RUVOLO,

Appellee.

MOTION FOR AN ORDER DIRECTING
THE COURT OF APPEALS
FOR LUCAS COUNTY
TO CERTIFY ITS RECORD

1983 TERM

TO WIT: March 9, 1983

FILED: March 23, 1983

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00 paid by John G.

Rust.

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand the seal of the Court this 23rd day of March, 1983.

/s/ James Wm. Kelly, Clerk

/s/ Sam F. Adkins, Deputy

APPENDIX C

IN THE COURT OF APPEALS
LUCAS COUNTY, OHIO

COURT OF APPEALS NO. L-82-169

TRIAL COURT NO. CV 82-1277

JOHN G. RUST,

Appellant,

vs.

JAMES M. RUVOLO, et al.,

Appellees.

JOURNAL ENTRY

FILED: October 29, 1982

Before: John J. Connors, Jr., Presiding Judge, Andy Douglas, Judge, and John H. Barber, Judge

Finding the sole assignment of error not well taken, judgment of the Lucas County Common Pleas Court is affirmed at appellant's costs and cause is remanded to said court for execution of judgment and assessment of costs. See Opinion by Douglas, J., on file.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp. R. 4, amended 1/1/80.

/s/ John J. Connors, Jr.
Presiding Judge

/s/ Andy Douglas
Judge

/s/ John H. Barber
Judge

APPENDIX D

IN THE COURT OF APPEALS
LUCAS COUNTY, OHIO

COURT OF APPEALS NO. L-82-169

COMMON PLEAS NO. CV 82-1277

JOHN G. RUST,

Plaintiff-Appellant,

vs.

JAMES M. RUVOLO, et al.,

Defendants-Appellees.

OPINION

DECIDED: October 29, 1982

HEADNOTE

A determination by a political party that a candidate for a political office, not endorsed by that party, may not speak at party organized and authorized meetings, is a patently political matter and therefore not justiciable.

Mr. John G. Rust, Pro Se.

Messrs. Jerome Phillips and John A. Harris, III, and Ms. Joan Torzewski, Attorneys for Appellees.

DOUGLAS, J. This case comes before this court on appeal from judgment of

the Lucas County Court of Common Pleas, denying appellant's motion for a preliminary injunction and granting appellees' motion to dismiss appellant's complaint.

Appellant, John G. Rust, was an unendorsed candidate for the office of United States Congressman in the June 8, 1982, Democratic primary. During appellant's campaign, he attempted to speak at various Democratic club meetings. In accordance with the provisions of the Lucas County Democratic Party's Constitution and policies, however, the majority of the clubs did not permit appellant to speak at such meetings.

On May 24, 1982, appellant filed a complaint in the Lucas County Court of Common Pleas against appellees, James M. Ruvolo, individually, and as

Chairman of the Democratic Party of Lucas County, Ohio, and the Democratic Party of Lucas County, Ohio. In his complaint, appellant alleged that appellees had instructed the Democratic clubs and organizations to deny appellant and other unendorsed candidates the right to speak at meetings. Appellant sought a temporary restraining order and preliminary injunction, directing appellees to withdraw any such instructions, and further ordering appellees to instruct the organizations to accord unendorsed candidates the same privileges accorded endorsed candidates. Appellant further filed, that same day, a motion for a temporary restraining order.

On May 25, 1982, appellees filed a motion to dismiss appellant's complaint and motion for a temporary

restraining order for failure to state a claim upon which relief could be granted on the ground that the matter in issue involved the internal policies of a political party.

On May 26, 1982, the trial court, finding that appellant had not been deprived of his constitutional rights of free speech and assembly and that the matter was patently political, granted appellees' motion to dismiss.

From that judgment, appellant appeals, presenting the following assignment of error:

> "The Trial Court committed reversible error in granting defendant's Motion to Dismiss because plaintiff's complaint does not state a claim on which relief may be granted."

Appellant contends that the trial court erred in dismissing appellant's complaint for the reason that said

complaint did state a valid claim for relief from the violation of appellant's rights of free speech and assembly.

Our review of the record reveals the following pertinent information. Appellant had been an active member of the Democratic Party for a number of years. There is no indication that appellant attempted to institute any change in the party's policies regarding unendorsed candidates during this time. More importantly, the record reveals that appellant did not seek the party's endorsement for his candidacy.

In Jenkins v. Porter (1969), 22 Ohio Misc. 48, the Common Pleas Court of Cuyahoga County stated, at 53, that:

> "There is no statutory law and no prohibition of any kind which prevents a

> political party from endorsing any certified candidate for its choice in any election. Freedom of expression and freedom of endorsement is a constitutional right under the United States Constitution and the Constitution of the state of Ohio. A political party is expected to exercise its obligation and responsibility to scrutinize candidates running for office and determine which candidate or candidates it desires to support. That is their choice and there cannot be any interference from any source so long as their decision was properly exercised."

We find no evidence in the record that appellees violated any rules or regulations applicable to either the endorsement procedure or the subsequent promotion of the endorsed candidate. We further find no evidence that appellant was, in any way, treated differently from other unendorsed candidates. Rather, appellant, having not obtained his party's endorsement, seeks

a judicial mandate entitling him to all the benefits of such endorsement. We concur in the trial court's determination that extending appellant such benefits would ". . . undermine the purpose of political endorsements." As stated in Ripon Society, Inc. v. National Republican Party (D.C. Cir., 1975), 525 F. 2d 567, cert. denied 424 U.S. 933, at 585:

> "What is important for our purposes is that a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the protection of the Constitution as much if not more than its condemnation. The express constitutional rights of speech and assembly are of slight value indeed if they do not carry with them a concomitant right of political association. Speeches and assemblies are after all not ends in themselves but means to effect change through the political process.

> If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective."

Further, we concur in the trial court's determination that this matter is patently political and, therefore, not justiciable. In State, ex rel. McCurdy, v. DeMaioribus (1967), 9 Ohio App. 2d 280, the Court of Appeals of Cuyahoga County stated, at 281, the following general rule of judicial restraint with respect to disputes involving the internal affairs of political parties:

> "The courts of the United States have had a long history of not interfering in the internal affairs of political parties. The reasons for this position taken by the courts are simple. Although political parties have certain public responsibilities, they are basically voluntary associations made up of persons who act together

> for various community and party purposes and who are governed in most respects by their own rules and usages."

Finally, we note that we do not find that appellees' conduct constitutes the requisite "State action", essential to appellant's claim, in that there is neither a sufficient nexus between the challenged action and the State nor any claim of invidious discrimination affecting participation in the electorial process. See Ripon Society, Inc., supra, at 574-76. Further, compare Moose Lodge No. 107 v. Irvis (1972), 407 U.S. 163; Smith v. Allwright (1944), 321 U.S. 649.

For the foregoing reasons, we find appellant's assignment of error not well taken.

On consideration whereof, the court finds substantial justice has

been done the party complaining and judgment of the Lucas County Court of Common Pleas is affirmed.

This cause is remanded to said court for execution of judgment and assessment of costs. Costs to appellant.

JUDGMENT AFFIRMED.

CONNORS, P.J., and BARBER, J., concur.

APPENDIX E

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

CASE NO. 82-1277

JOHN G. RUST,

Plaintiff,

vs.

JAMES M. RUVOLO, ET AL.,

Defendants.

DECISION

FILED: May 26, 1982

Before the Court are Plaintiff's motion for a temporary restraining order and Defendants' motion to dismiss. At controversy is a policy promulgated by the Democratic Party of Lucas County which has been in force for approximately forty years and wherein provides:

> "It is the policy of the Lucas County Democratic Party not to aid or provide a platform for candidates running against endorsed candidates.

> In regard to club meetings, these unendorsed candidates are not allowed to be on the club's agenda or speak before the membership. This would constitute aiding a candidate who is running against an endorsed candidates (sic).
>
> This prohibition applies to all Republican and Independent candidates, but also to all Democrats who have chosen to run against endorsed Democrats.
>
> These candidates are: John Rust....
>
> None of these people should be allowed to speak at a club meeting.
>
> This policy was established to aid any endorsed candidates in their elections. We need to give them our full support and not provide opportunities for their opponents to speak against them."

On February 25, 1982, Plaintiff contacted Defendant James M. Ruvolo as Chairman of the Executive Committee of the Democratic Party to commence his candidacy for the office of United States Congressman for the Ninth

Congressional District of Ohio. Ruvolo responded negatively to Plaintiff's announcement, from which Plaintiff concluded that he would receive no assistance in his campaign.

The Democratic Party in Lucas County has a screening procedure by which they select which candidates, if any, will receive the local party's endorsement. The procedure includes interviews of all persons seeking party endorsement by the Selection and Endorsement Committee. Thereafter, the committee makes a recommendation of a particular candidate for endorsement. If a candidate receives an endorsement he also receives certain benefits with and privileges from the party to aid and assist his campaign. Among the benefits conferred is the right to address men's and women's clubs on political subjects without

having to confront unendorsed opponents. If the screening committee makes no recommendation and the Democratic Party makes no endorsement, then all candidates for that particular office are entitled to speak before Democratic organizations.

Plaintiff herein made no effort to interview with the Selection and Endorsement Committee, nor did he seek the enforsement of the Democratic Party by any other available procedure. Instead, he filed his nominating petitions with the Board of Elections, became certified as a candidate for the office he sought and then attempted to utilize Democratic Clubs as political forums as though he were the endorsed candidate. Apparently the majority of the clubs where he attempted to speak followed party policy and refused him the opportunity. Some clubs permitted him to speak. But

Plaintiff claims that Defendants have denied him his constitutional rights to free association and speech. He further claims that the local policy heretofore stated is repugnant to the national and state charters.

It should be noted that Plaintiff did not follow established procedures to seek endorsement; nor did he, at any time critical, attempt to legislate a change of policy within the local Democratic Party. Rather, having failed to seek the endorsement, he now calls upon this Court to grant him the rights, privileges and benefits of an endorsed candidate.

A cursory review of Plaintiff's citations of applicable law reveal that he has not been deprived of his constitutional rights of free speech of assembly. As stated in Jenkins v.

Porter (1969), 22 Ohio Misc. 48,53:

> "There is no statutory law and no prohibitions of any kind which prevents a political party from endorsing any certified candidate for its choice in any election. Freedom of expression and freedom of endorsement is a constitutional right under the United States Constitution and the Constitution of the State of Ohio. A political party is expected to exercise its obligation and responsibility to scrutinize candidates running for offices and determine which candidate or candidates it desires to support. That is their choice and there cannot be any interference from any source so long as their decision was properly exercised."

There is no evidence that the local Democratic Party violated any rules or regulations applicable to the endorsement procedure. Having not obtained endorsement, Plaintiff is not now entitled to speak at club meetings. To extend him that right and to all those

similarly situated would create confusion at meetings and undermine the purpose of political endorsements.

More importantly, this matter is patently political, and Courts have no authority to interfere in the internal affairs of political parties. The Court of Appeals of Cuyahoga County held in State ex rel. McCurdy v. Demaioribus (1969) 9 Ohio App. 2d 280 that courts have a long history of not interfering with internal affairs of political parties. The court stated that parties are basically voluntary associations made up of persons who act together for community and party purposes and who are governed in most respects by their own rules and regulations. More importantly, the parties usually provide their own procedure and tribunals for resolution of their own affairs.

Therefore, I conclude that Plaintiff has failed to establish sufficient facts from which I can find that his rights have been violated. His motion for a preliminary injunction is overruled. Defendants' motion to dismiss is sustained.

Dated: May 26, 1982

/s/ Robert D. Nichols
Judge

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

MASSAC COUNTY, ILLINOIS

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a corporation,

Plaintiff,

vs.

GEORGE A. SCHNEEMAN, JR. DIANE SCHNEEMAN, PADUCAH BANK & TRUST COMPANY, PADUCAH, KENTUCKY, a corporation, INTERNATIONAL HARVESTER CREDIT CORPORATION, CERRO CORPORATION, FRONTIER SPAR CORPORATION, FIVE RESOURCES, INC., TEXAS PACIFIC OIL CO., INC., and UNKNOWN OWNERS,

Defendants.

82-2065

No. 81-L-1

DECREE OF FORECLOSURE AND SALE

This day comes the Plaintiff, JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a corporation, by its attorneys, William F. Meehan and David Antognoli.

And it appearing to the Court that the Plaintiff heretofore commenced this action by filing its Complaint hereto; that the affidavit required to make UNKNOWN OWNERS Defendants of this action was duly filed and UNKNOWN OWNERS having been duly and regularly made party Defendants to this action in the manner provided by law.

And the Court having examined the files and records in this cause and having heard evidence and being fully advised in the premises, finds that each of the Defendants in this case has been duly and properly brought before this Court, either through service of summons, answer, publication, publication and mailing, or entry of appearance, all in manner provided by law; and that due and proper notice has been given to each of the Defendants during the progress of this cause, as required by law; that this Court now has jurisdiction of all of the parties to this cause and the subject matter hereof.

And it further appearing to the Court that the Defendants, George Schneeman, Jr., Diane Schneeman, International Harvester Credit

Corporation, Cerro Corporation, Frontier Spar Corporation, Five Resources, Inc., Texas Pacific Oil Co., Inc., and Unknown Owners, have all failed to plead, but therein made default, and an Order of Default has been heretofore entered against Defendants, George A. Schneeman, Jr., Diane Schneeman, International Harvester Credit Corporation, Cerro Corporation, Frontier Spar Corporation, Five Resources, Inc., Texas Pacific Oil Co., Inc., and Unknown Owners, herein;

And it further appearing to the Court that Defendant Paducah Bank and Trust Company, Paducah, Kentucky, has filed an answer to Plaintiff's complaint claiming a junior mortgage upon the real estate described in Exhibit "A", attached hereto and incorporated herein by reference.

And it further appearing to the Court that this cause coming on now to be heard upon the Plaintiff's Complaint, Answer of Paducah Bank and Trust Company, Paducah, Kentucky, and upon all other pleadings and affidavits and upon all the files, matters and order of record herein;

And it further appearing to the Court that due notice of the presentation of this Decree has been given to all parties entitled thereto, and the Court being fully advised in the premises, does find from the files, records and competent evidence herein as follows:

1. That all the material allegations of the Plaintiff's Complaint are true and proven, and that by virtue of the mortgage and the evidence of the indebtedness secured thereby alleged in the Complaint, there is due to the Plaintiff, and it has valid and subsisting lien on the property described in Exhibit "A" for the following amounts:

   (a) Principal and accrued interest on note secured by Plaintiff's mortgage as of 3/30/81 . . . . $357,345.51

   (b) Advances and expenses of foreclosure with interest thereon as of 3/30/81 . . . . . 2,110.74

   (c) Attorneys fees as of 3/30/81. . . . . 11,328.00

(d) Anticipated additional costs. 500.00

TOTAL $371,284.25

2. That in said mortgage it is provided that the attorneys for the Plaintiff are entitled to reasonable attorneys' fees; that the sum of $11,328.00 has been included in the above indebtedness as for said attorneys' fees as provided in said mortgage; that said sum is usual, customary and reasonable charge made by attorneys in like cases; and that said sum is hereby allowed to the Plaintiff.

3. That under the provisions of said mortgage to Plaintiff, the costs of this foreclosure incurred by Plaintiff and advances made by Plaintiff to protect its interest in the premises, together with interest thereon at the rate of 12 3/4% per annum, are an additional indebtedness for which the Plaintiff should be reimbursed and such expenses are hereby allowed to the Plaintiff.

4. That the mortgage described in the Complaint and hereby foreclosed appears of record in the Office of the Recorder of Deeds of Massac County, Illinois in Book 182, Pages 99 through 103 and in the Office of the Recorder of Deeds of Pope County, Illinois in Book 463 through 465.

5. That the rights and interest set forth below of all parties to this cause in and to the property described in Exhibit "A" are inferior to the lien of the Plaintiff heretofore mentioned:

(a) Paducah Bank and Trust Company, Paducah, Kentucky, Security Agreement dated April 1, 1980, filed for record in Massac County, Illinois, as Instrument No. 12348; Mortgage dated April 1, 1980, filed for record in Massac County, Illinois, in Book 187, pages 17 through 19.

(b) International Harvester Credit Corporation,

two Financing Statements filed as Instrument No. 12673 and 12382 in Massac County, Illinois. Instrument No. 12673 was filed on October 6, 1980, Instrument No. 12382 was filed on April 28, 1980.

(c) Cerro Corporation, Lease Agreement with Option to Purchase to Cullum Mining Company dated March 18, 1971, recorded in Volume 116 at pages 271-275, said Lease assigned to Cerro Corporation dated May 26, 1972, recorded in Volume 158 of Records at pages 76-78, Massac County, Illinois Recorder's Office.

(d) Frontier Spar Corporation, Mortgage Deed from Frontier Spar Corporation to Five Resources, Inc., dated August 9, 1973, recorded in Book 128 at pages 242-257, Massac County, Illinois.

(e) Texas Pacific Oil Company, Inc., Oil and Gas Lease dated July 17, 1978, recorded September 13, 1978, in Volume 174 of Records at pages 7-9 in Massac County, Illinois, and recorded September 22, 1978 in Book 7 at page 145 in Pope County, Illinois. Oil and Gas Lease dated July 12, 1978, recorded September 13, 1978 in Book 174 Pages 5-7, Massac County, IL.

(f) Five Resources, Inc., see No. (d) above.

6. That the mortgage sought to be foreclosed herein was executed after August 7, 1961; that the liens and redemption rights of said mortgages are not to be governed by the provisions of Section 18 (a), 18 (b) 18 (c) or 18 (d) of Chapter 77, and that George A. Schneeman, Jr., Diane Schneeman, Paducah Bank and Trust Company, Paducah, Kentucky, International Harvester Credit Corporation, Cerro Corporation, Frontier Spar Corporation, Five Resources, Inc., Texas Pacific Oil Company., Inc., and Unknown Owners are the owners of the equity of redemption.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that unless within three (3) days from the entry of this Decree, there shall be paid to the Plaintiff the sum of the principal balance, accrued interest, costs of suit and attorneys' fees mentioned in paragraph one of this Decree, with interest thereon at the lawful rate, together with all the said costs taxed herein, the real estate hereinabove described together with all improvements thereof and appurtenances belonging thereto or so much thereof as may be necessary to pay the amounts found due and which may be sold separately without material injury to the parties in interest, be sold at public vendue to the highest and best bidder, for cash by a Judge of Massac County, Illinois, in a courtroom of the Massac County Courthouse Building, in the City of Metropolis, County of Massac, and State of Illinois.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Judge give public notice of the date, time, place and terms of said sale (a) by publishing the same at least once in each week for three successive weeks in a secular newspaper of general circulation published in the City of Metropolis, County of Massac, and State of Illinois, the first publication to be not less than twenty days before the date of said sale, and (b) by placing written or printed notices thereof in at least 3 of the most public places in the counties where the real estate is situated, specifying the name of the judgment creditor and judgment debtor in the judgment in all of which notices the real estate to be sold shall be described with reasonable certainty; that said Judge in his discretion, for good cause shown, may adjourn said sale from time to time by appearing and notifying all parties present of the date and time of such continuance without further publication; that the Plaintiff or any of the parties to this cause may become the purchaser or purchasers at such sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Judge, upon making such sale, shall with all convenient speed, report the same to the Court for its approval and confirmation, and he shall likewise report the distribution of the proceeds of sale and his acts and doings in connection therewith; that out of the proceeds of such sale, he shall make distribution in the following order of

priority:

(a) for his fees, disbursements and commissions on such sale;

(b) to the plaintiff all costs of suit, attorneys' fees and other expenses of litigation, all monies advanced by Plaintiff, all accrued interest remaining unpaid on the indebtedness secured by the mortgage herein foreclosed, and all of said principal remaining unpaid, all as specified in paragraph one herein;

(c) to all Defendants as ordered by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Judge take receipts from the respective parties to whom he may have made payments as aforesaid, and file the same with his Report of Sale and Distribution in this Court; that, if after the payments of all the foregoing items, there shall be a remainder, he hold the surplus subject to the further order of this Court, and if there be not sufficient funds to pay in full the amounts found due in paragraph one herein, he shall specify the amount of deficiency in his report of sale; that a deficiency decree for such amount, if any be at that time entered against the defendants, George A. Schneeman, Jr. and Diane Schneeman, that said defendants be directed to pay the same, and that judgment be entered therefor against said defendants at said time and that execution issue thereon; and further that said deficiency decree stand as a lien and apply against the rents, issues and profits accruing from said premises during the period of redemption; and that a receiver be appointed upon the application of Plaintiff to collect said rents, issues and profits and to apply them upon said deficiency.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the owners of the equity of redemption in the premises hereinabove described were served with summons or by publication as required by law on the dates set forth by their names:

1. George A. Schneeman, Jr. 1-14-81
2. Diane Schneeman 1-14-81

3.	Paducah Bank and Trust Company	1-28-81
4.	International Harvester Credit Corp.	1-26-81
5.	Cerro Corporation	1-23-81
6.	Frontier Spar Corporation	1-23-81
7.	Five Resources, Inc.	2-26-81
8.	Texas Pacific Oil Co., Inc.	1-23-81
9.	Unknown Owners	2-5-81;

that if the premises so sold shall not have been redeemed by the aforesaid respective owners of equity of redemption within twelve months from the aforementioned respective dates set forth above by their names, or, within six months from the date of said sale, whichever be later, then the defendants and all persons claiming under them, or any of them since the commencement of this suit, be forever barred, foreclosed of and from all rights and equity of redemption or claim of, in and to said premises or any part thereof, and in case said premises shall not be redeemed as aforesaid, then upon production to said Judge or Assocate Judge or his successor of said certificate or certificates of sale by the legal holder thereof, said Judge or Associate Judge shall execute and deliver to him a good and sufficient deed of conveyance of said premises; and that thereupon the grantee or grantees in such deed or his or her legal representatives or assigns be let into possession of said premises, and that any of the parties to this cause who shall be in possession of said premises or any portion thereof, or any person who may have come into such possession under them, or any of them, since the commencement of this suit shall, upon the production of said Judge's or Associates Judge's deed of conveyance, surrender possession of said premises to said grantee or grantees, his or her representatives or assigns, and in default of so doing, a writ of assistance shall issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorney for plaintiff may withdraw from the files of this cause all original exhibits offered in evidence by him.

The Court hereby retains jurisdiction of the subject matter of this cause and of all the parties hereto, for the purpose of enforcing

this decree, and expressly finds that there is no just reason for delaying the enforcement of this decree or an appeal therefrom.

ENTER: March 30, 1961

Judge

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

MASSAC COUNTY, ILLINOIS

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a corporation,

Plaintiff,

vs.

GEORGE A. SCHNEEMAN, JR., DIANE SCHNEEMAN, PADUCAH BANK AND TRUST COMPANY, PADUCAH, KENTUCKY, a corporation, INTERNATIONAL HARVESTER CREDIT CORPORATION, CERRO CORPORATION, FRONTIER SPAR CORPORATION, FIVE RESOURCES, INC., TEXAS PACIFIC OIL CO., INC., and UNKNOWN OWNERS,

Defendants.

No. 81-L-1

FILED

MAY 14 1981

CLERK OF THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
MASSAC COUNTY, ILLINOIS

JUDGE'S REPORT AND CONFIRMATION OF SALE

The undersigned, Judge of the Circuit Court of Massac County, Illinois, reports that in pursuance of a Decree of said Court for Foreclosure of Mortgage, entered on the 30th day of March, 1981, in the above entitled cause, after having duly advertised the property mentioned in said Decree according to law and the Decree, I did, on the 8th day of May, 1981, at 9:00 a.m., in the Courtroom of the Massac County Courthouse, Metropolis, Illinois, offer, strike off and sell at public auction the property described in Exhibit "A" attached hereto and incorporated herein by reference to John Hancock Mutual Life Insurance Company, a corporation, subject to the equity of redemption, for the sum of $374,763.13, it being the highest and best bid therefor.

According to the terms of said Decree of Sale, there was due to plaintiff on the date of such sale for principal, interest, costs and attorneys fees, the sum of $371,284.25, together with interest from the date of said Decree to the date of sale in the amount of $3,478.88, making the total amount due to plaintiff the sum of $374,763.13.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the above described sale be, and the same hereby is,

in all respects approved, ratified and confirmed.

2. That a Certificate of Sale be issued and delivered to the purchaser herein and that duplicates thereof be filed in the Office of the Recorder of Deeds of Massac and Pope Counties, Illinois.

3. That this Court reserves and retains jurisdiction over the subject matter of this suit in so far as it may be necessary to make and enter any and all proper orders with reference to the appointment of a receiver for said premises hereinabove described and with reference to the management of said premises by such receiver as may be appointed by this Court, and with reference to any and all receivership matters, if a receiver be appointed.

JUDGE

DATED: May 11, 1981

PARCEL I: The West One-half of the Southwest Fourth of the Southw Quarter of Section 17; 13 1/3 acres off the East side of the North Fourth of the Northeast Quarter of Section 19; the Northwest Fourt of the Northwest Quarter of Section 20; 13 1/3 acres off the East of the South One-half of the Southeast Quarter of Section 18, exce parcel of ground lying East of the Blacktop Road, beginning at a p 100 feet South of the access road, running thence South 240 feet; thence East 400 feet; thence North 240 feet; thence West 400 feet the point of beginning, AND the Northeast Fourth of the Northeast Quarter of Section 19, all of the above being in Township 14 South, Range 5 East of the 3rd P.M., Massac County, Illinois, excepting therefrom rights-of-way of public roads.

PARCEL II: The South One-half of the Southeast Quarter of Section The Southeast One-fourth of the Southwest Quarter of Section 17; T East One-half of the Southwest One-fourth of the Southwest Quarter Section 17, all of the above being in Township 14 South, Range 5 E of the 3rd P.M., Massac County, Illinois, excepting therefrom righ of-way of public roads.

PARCEL III: The Southeast One-fourth of the Northeast Quarter of Section 20, Township 14 South, Range 5 East of the 3rd P.M., excep the right-of-way of State Highway 145, AND The Northeast One-fourth the Northeast Quarter of Section 20, Township 14 South, Range 5 Eas of the 3rd P.M., excepting 2.19 acres along the East side thereof heretofore conveyed for purposes of a public road, Massac County, Illinois.

PARCEL IV: The Northeast One-fourth of the Northwest Quarter of Section 20 and the Northwest One-fourth of the Northeast Quarter of Section 20, Township 14 South, Range 5 East of the 3rd P.M., Massac County, Illinois, excepting therefrom rights-of-way of public roads

PARCEL V: The South One-half of the Northeast Quarter of Section 7 Township 14 South, Range 5 East of the 3rd P.M., Massac County, Illinois, and the South One-half of the Northwest Quarter of Sectio Township 14 South, Range 5 East of the 3rd P.M., Massac and Pope Counties, Illinois, excepting therefrom rights-of-way of public roa

Excepting therefrom a Partial Release of Plaintiff's Mortgage, which Release was recorded in Volume 187 at pages 99-100 in the Office of the Recorder of Deeds, Massac County, Illinois.

EXHIBIT "A"

Vol. 213 Page 125

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

MASSAC COUNTY, ILLINOIS

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a corporation,	)	
Plaintiff,	)	
vs.	)	No. 81-L-1
GEORGE A. SCHNEEMAN, JR., DIANE SCHNEEMAN, PADUCAH BANK AND TRUST COMPANY, PADUCAH, KENTUCKY, a corporation, INTERNATIONAL HARVESTER CREDIT CORPORATION, CERRO CORPORATION, FRONTIER SPAR CORPORATION, FIVE RESOURCES, INC., TEXAS PACIFIC OIL CO., INC., and UNKNOWN OWNERS,	)	
Defendants.	)	

JUDGE'S DEED

Pursuant to and under the authority conferred by the provisions of a Decree entered by the Circuit Court of Massac County, Illinois, on March 30, 1981, in Case No. 81-L-1 entitled John Hancock Mutual Life Insurance Company, a corporation, Plaintiff, vs. George A. Schneeman, Jr., Diane Schneeman, Paducah Bank and Trust Company, Paducah, Kentucky, a corporation, International Harvester Credit Corporation, Cerro Corporation, Frontier Spar Corporation, Five Resources, Inc., Texas Pacific Oil Co., Inc., and Unknown Owners, Defendants, in accordance with which the property hereinafter described was sold at public sale on May 8, 1981, to John Hancock Mutual Life Insurance Company, a corporation, it being the highest and best bidder therefore, the time and place of such sale having been duly advertised according to law, the sale having been conducted by the Honorable Jim Williamson, a Judge of the Circuit

Further excepting the property described in Partial Release recorded in Volume 187 at pages 99-100 in the Office of the Recorder of Deeds, Massac County, Illinois,

hereby conveying to John Hancock Mutual Life Insurance Company, a corporation and its successors and assigns all right, title and interest formerly held by George A. Schneeman, Jr. and Diane Schneeman and all parties claiming through or under them in and to the property.

In Witness Whereof, I have executed this Deed, consisting of three pages, this page included, this 10th day of MAY, 1983.

Louis G. Hamman
JUDGE

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

May 25, 1983

82-2065

Mr. George Alvin Schneeman, Jr.
R. R. 4
Metropolis, Illinois 62960

RE: George Alvin Schneeman, Jr.
v. Donald Lowery, District Judge,
Massac, Illinois, et al.

Dear Mr. Schneeman:

Your petition for a writ of prohibition directed to the District Court of Massac County, Illinois, was received May 24, 1983 and is returned for failure to comply with Rules 26 and 27 and the Rules of the Supreme Court. There are not attached to the petition copies of any judgments of the appellate courts of Illinois to show that relief has first been sought and denied in those courts.

Your reliance upon Article III of the Constitution of the United States to confer original jurisdiction on this Court to hear the matter is misplaced.

Your check in the amount of $200.00 is herewith returned.

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

rjb
cc: The Honorable Donald Lowery

June 1, 1983

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

Dear Sirs:

The jurisdiction of the Court is well spelled out in the Petition for Writ of Prohibition.

As a citizen operating at law, and not enjoying any maritime adventure for profit under limited liability for the payment of debt, the U.S. Supreme Court is the only Court that has the jurisdiction in that the fact it is a maritime matter of maritime limited liability for the payment of debt, encroaching upon the common law and therefore the U.S. Supreme Court is the only Court that has the jurisdiction to issue the Writ.

Yours truly,

George Alvin Schneeman

George Alvin Schneeman, Jr.
R.R. #4
Metropolis, Illinois 62960

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

June 3, 1983

Mr. George Alvin Schneeman, Jr.
R. R. #4
Metropolis, Illinois 62960

RE: George Alvin Schneeman, Jr.
v. Donald Lowery, District Judge,
Massac County, Illinois, et al.

Dear Mr. Schneeman:

Your petition for writ of prohibition was received again June 2, 1983. As we discussed by telephone on June 1, 1983, until and unless relief has been sought and denied through all the appropriate Illinois state courts, this Court is without jurisdiction to review the judgment of the District Court of Massac County, Illinois. The jurisdiction of the Supreme Court to review judgments of state courts is found in 28 U.S.C. §1257. Your reference to 28 U.S.C.§1651(a) is misplaced inasmuch as no final judgment by the highest court of Illinois in which such judgment could be had has been entered. In aid of this Court's jurisdiction under 28 U.S.C.§1651(a) there must be such a judgment.

Very truly yours,

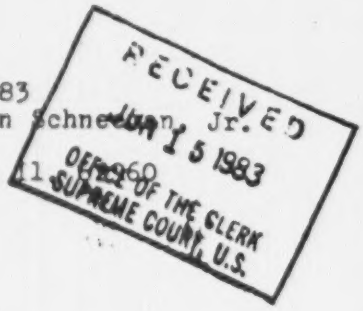
ALEXANDER L. STEVAS, Clerk

By Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

rjb
encl.

June 13, 1983
George Alvin Schneeman, Jr.
R.R.#4
Metropolis, Illinois 62960



Francis J. Lorson
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

82-2065

Re: George Alvin Schneeman, Jr. v.
Donald Lowery, District Judge,
Massac County, Illinois, et al.

Dear Mr. Lorson:

We are returning the returned petition because the U.S. Supreme Court is the only court with the Jurisdiction to hear the instant case, because the State of Illinois has usurped a Federal Power via of a Federal Statute, namely 46 U.S.C.. There are no state statutes involved, therefore it is a Federal question and comes under Article III, Section 2, Subsection 2.

I respectfully demand that this Writ be accepted.

Yours truly,

George Alvin Schneeman

George Alvin Schneeman, Jr.